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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205331
Party	Plaintiff Ms. Teresa H. Earnhardt
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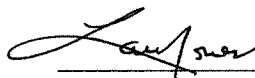
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Teresa H. Earnhardt,	§	Consolidated Opposition Nos.
	§	91205331 (parent) and 91205338
Opposer,	§	
	§	In the matter of:
vs.	§	
	§	Application Serial No. 85/383,910
Kerry Earnhardt, Inc.,	§	Mark: EARNHARDT COLLECTION
	§	(Intl. Class 20)
Applicant.	§	
	§	Application Serial No. 85/391,456
	§	Mark: EARNHARDT COLLECTION
		(Intl. Class 37)

OPPOSER'S NOTICE OF FILING OF THE
TRANSCRIPT AND EXHIBIT OF THE TESTIMONY
PERIOD DEPOSITION OF JUDY QUEEN

PLEASE TAKE NOTICE that Teresa H. Earnhardt ("Opposer") hereby files the transcript and Opposer's Exhibit No. 16 of the August 26, 2014, testimony period deposition of Judy Queen.

Respectfully submitted,



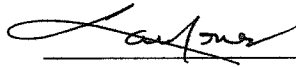
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Opposer's Notice of Filing of the Transcript and Exhibit of the Testimony Period Deposition of Judy Queen" and the accompanying materials are being served on Applicant by depositing copies of same in the United States mail, first-class postage prepaid, on the 5th day of January, 2015 addressed to Applicant's attorneys of record as follows:

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Charlotte, NC 28246-0106



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

- - - - -X Consolidated Opposition

Teresa H. Earnhardt, : Nos. 91205331 (parent) and

Opposer, : 91205338

: In the Matter of:

v. : Application Serial

: No. 85/383,910

Kerry Earnhardt, : Mark: EARNHARDT COLLECTION

Inc., : (Intl. Class 20)

Applicant. : Application Serial

- - - - -X No. 85/391,456

Mark: EARNHARDT COLLECTION

(Intl. Class 37)

Deposition of JUDY QUEEN

(Taken by Opposer)

Charlotte, North Carolina

August 26, 2014

Reported by: Andrea Nobrega

Court Reporter

Notary Public

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19 Also Present: JOE HEDRICK

20

21 Deposition of JUDY QUEEN, taken by the
22 Opposer, at 101 South Tryon Street,
23 Charlotte, North Carolina, on the 26th day
of August, 2014 at 1:03 p.m., before
Andrea L. Nobrega, Notary Public and Court
reporter.

24

25

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1 P R O C E E D I N G S

2 Whereupon, JUDY QUEEN, having been first
3 duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. ROSE:

7 Q. Good afternoon.

8 A. Hey, Bruce.

9 Q. Could you please state your name
10 for the record?

11 A. Yes, Judy Queen.

12 Q. Where do you live, Ms. Queen?

13 A. Charlotte, North Carolina.

14 Q. I'm handing you a document that's
15 been marked for identification as
16 Opposer's Exhibit No. 16.

17 If you would, take a look at
18 Exhibit No. 16 and just let me know if
19 it's your understanding you are appearing
20 here today pursuant to this notice of
21 deposition?

22 A. Yes.

23 Q. Can you tell me, Ms. Queen, by
24 whom are you employed?

25 A. Dale Earnhardt, Inc.

1 Q. Is that sometimes referred to as
2 DEI?

3 A. Yes, it is.

4 Q. Just so we are all operating on
5 the same page then today, periodically I
6 may refer to DEI or you might, and is it
7 your understanding that references today
8 to DEI, unless we say otherwise, that's a
9 reference to Dale Earnhardt, Inc.?

10 A. Yes.

11 Q. Could you describe generally the
12 business of DEI and its affiliates?

13 A. Yes. DEI has several units within
14 its umbrella. We have ETG, which produces
15 parts and pieces for the various race
16 teams.

17 We have Champion Air, LLC, which
18 transports -- it's an airline business
19 which transports the race team to the
20 races.

21 We have a retail business where we
22 sell memorabilia onsite, and we have a
23 licensing department as well, and we also
24 manage the Dale Earnhardt Foundation.

25 Q. You reference the umbrella of

1 entities at DEI. Just run through a few
2 entity names, and if you could give me a
3 general understanding of what those
4 entities do.

5 The first one is Earnhardt Farms,
6 LLC. What generally does that entity do?

7 A. The farm raises and sells cattle.
8 We have an equestrian development business
9 going on, and we also raise and sell
10 agricultural products.

11 Q. The next I have is Earnhardt
12 Rental Properties, LLC. What does that
13 entity do?

14 A. This entity holds residential
15 properties that we lease to others.

16 Q. And the next is Earnhardt Real
17 Properties, LLC. What does that do?

18 A. That holds business properties
19 that we lease to others.

20 Q. And then Earnhardt Promotions,
21 LLC, what does that entity do?

22 A. Earnhardt Promotions was formed
23 when we had the Dale Earnhardt Celebration
24 Concert.

25 Q. And Earnhardt-Childress Racing

1 Technologies, LLC, what does that entity
2 do?

3 A. It produces racing engines for the
4 NASCAR teams.

5 Q. How long have you been with DEI?

6 A. Approximately 16 years.

7 Q. And what's your position there?

8 A. Vice president of operations.

9 Q. How long have you been in that
10 position?

11 A. Approximately 12 years.

12 Q. And before becoming the vice
13 president of operations, what was your
14 position at DEI?

15 A. I was the executive assistant for
16 Dale and Teresa Earnhardt.

17 Q. If you would, describe generally
18 for me what your duties and
19 responsibilities are as the vice president
20 of operations?

21 A. I manage and oversee the
22 operations of all the entities under the
23 DEI umbrella.

24 Q. And describe generally for me what
25 your duties and responsibilities were as

1 the executive assistant to Dale and Teresa
2 Earnhardt?

3 A. I managed Dale and Teresa's
4 personal finances and their personal
5 businesses.

6 I also attended the DEI meetings
7 and reported and updated Teresa on the DEI
8 operations.

9 Q. So is it fair to say that for the
10 last 16 years you have been personally
11 involved in the affairs of Teresa
12 Earnhardt, and until his death, the
13 affairs of Dale Earnhardt?

14 A. Yes.

15 Q. As part of your involvement with
16 DEI and Teresa and Dale Earnhardt,
17 describe for me, if you will, the
18 experiences you had as far as attending
19 NASCAR events and NASCAR related
20 activities?

21 A. As part of my employment, I
22 attended several functions. I attended
23 several races and I was able to view all
24 of the track side trailers and venues
25 there, which house the retail merchandise.

1 Q. You mentioned earlier when
2 describing the business activities of DEI,
3 you mentioned licensing. Do you recall
4 that?

5 A. Yes.

6 Q. Is it fair to say that having been
7 at DEI for 16 years and 12 years as the
8 vice president of operations, that you
9 have a thorough understanding of the
10 licensing practices at DEI?

11 A. Yes.

12 Q. I want to make a point of
13 clarification. In your deposition you
14 testified that you don't have any
15 involvement in licensing Dale Earnhardt
16 merchandise other than reviewing the
17 reports or administering the licensing
18 program.

19 Do you recall giving that
20 testimony?

21 A. Yes, I do.

22 Q. While you don't actually handle
23 the administration or negotiate the
24 licenses, have you observed the licensing
25 activities of DEI?

1 A. Yes.

2 Q. And how is that -- as given your
3 prior testimony, how is it you have come
4 to observe the licensing activities?

5 A. Again, as a part of my
6 responsibilities, I oversee all of the
7 entities within DEI and licensing is one
8 of them.

9 Although Mrs. Earnhardt makes
10 final approval of all the licensing items
11 and Mr. Taulbee negotiates those
12 contracts, because of my responsibilities
13 I have to oversee it all.

14 Q. Okay. And could you describe
15 generally how DEI's licensed goods are
16 marketed, for example, where people might
17 find DEI licensed goods?

18 A. Yes. They are licensed through
19 the chain stores, online marketing. We
20 have them in our retail store.

21 Q. You mentioned track side?

22 A. And track side trailers, yes.

23 Q. So how extensively by way of
24 products or product categories, has the
25 Dale Earnhardt mark been licensed

1 throughout the United States?

2 A. It's been licensed extensively
3 throughout the United States. Some of
4 those products or examples of those
5 products would be home decor, furniture,
6 folding chairs, blankets, Afghans, things
7 of that nature.

8 Q. And apparel?

9 A. Apparel, yes.

10 Q. How about collectibles?

11 A. Yes, collectibles as well.

12 Q. And for how long has that been the
13 case, that the licensing has been that
14 extensive?

15 A. For the 16 years that I have been
16 there and before -- it was also in place
17 before my employment as well.

18 Q. And you mentioned furniture and
19 home decor products. Can you give me some
20 examples of how extensively the Dale
21 Earnhardt mark has been licensed and used
22 throughout the United States in those
23 categories?

24 A. Yes. That's extensive as well,
25 and some examples of those are clocks,

1 apparel.

2 Q. Beanbag chairs?

3 A. Beanbag chairs, folding chairs,
4 rugs, bedding, lamps, ceiling fans, waste
5 baskets, things of that nature.

6 Q. I want to talk a little bit about
7 the fame of Dale Earnhardt.

8 Have you witnessed how NASCAR fans
9 view and reacted to or continue to react
10 to Dale Earnhardt?

11 A. Yes.

12 Q. Describe what you have witnessed
13 as far as fans and how they react to Dale
14 Earnhardt?

15 A. We have a retail store, and when
16 they come to DEI, they love to hear the
17 Dale Earnhardt stories. They will stand
18 in line just to hear one of those stories.

19 I have been at the races where all
20 the fans either wear black or they fly
21 their flags or they raise their number
22 three with their hands.

23 Q. So is it fair to say that NASCAR
24 fans, they either loved him or hated him
25 but everybody --

1 A. Absolutely, absolutely. You
2 either loved him or hated him, but you
3 knew who he was.

4 Q. And after his death, could you
5 describe how his popularity or fame was
6 affected when he passed?

7 A. Absolutely. I would say that it
8 grew extensively or continued to grow
9 after his death.

10 Q. And did that fame and popularity,
11 does that continue today?

12 A. Absolutely.

13 Q. Did it exist as of July 2011?

14 A. Yes, it did. People have referred
15 to --

16 MR. DAVIS: Objection, hearsay.

17 MR. ROSE: You can go ahead.

18 THE WITNESS: People refer to Dale
19 like they do Elvis, as Elvis was the king
20 of rock 'n' roll, then Dale was the hero
21 of NASCAR.

22 BY MR. ROSE:

23 Q. Can you give me further examples
24 of Mr. Earnhardt's fame?

25 A. Yes. Several, multiple states

1 have declared a Dale Earnhardt day, and
2 there is a North Carolina highway named
3 after Dale.

4 Q. In your experience, have people
5 sometimes referred to Dale Earnhardt as
6 just Earnhardt?

7 A. Absolutely.

8 Q. Is that still true today?

9 A. Absolutely.

10 Q. And so when you have heard
11 references made to just the word Earnhardt
12 by itself, who have you understood that to
13 be?

14 A. Dale Earnhardt -- no one else but
15 Dale Earnhardt. When we have people
16 dropping by the office in the retail
17 store, we sell merchandise of Dale and
18 Dale, Jr. and DEI.

19 When they reference Earnhardt,
20 they are talking about Dale Earnhardt and
21 when they reference Dale, Jr. we know who
22 that is as well.

23 Before his death when people
24 called, business associates, friends, they
25 all referred to him as Earnhardt.

1 MR. DAVIS: Objection, hearsay.

2 BY MR. ROSE:

3 Q. Have you personally heard those
4 phone calls where somebody has referred to
5 or asked for Earnhardt?

6 A. Absolutely. I took those phone
7 calls.

8 Q. And when you took those phone
9 calls and they asked for Earnhardt, who
10 did you send the calls to?

11 A. Dale Earnhardt.

12 Q. And you are familiar with an
13 individual named Dale Earnhardt, Jr.?

14 A. I am.

15 Q. And that's one of Dale Earnhardt's
16 sons, correct?

17 A. Yes.

18 Q. He is the son who is currently
19 racing in the NASCAR Sprint Cup series,
20 right?

21 A. Yes.

22 Q. So when you hear the term Dale
23 Earnhardt, do you understand that to be
24 the individual who is a seven time Winston
25 Cup champion and was in the inaugural

1 class of the NASCAR Hall of Fame?

2 A. Absolutely.

3 Q. And that's the same individual you
4 have always understood the term Earnhardt
5 to be associated with?

6 A. Yes.

7 MR. DAVIS: Bruce, I have been
8 pretty liberal about the leading, but I
9 would prefer that the witness testify.

10 BY MR. ROSE:

11 Q. We have spoken a minute ago about
12 Dale Earnhardt, Jr. What are some of the
13 other names that Dale Earnhardt, Jr. is
14 known in the industry as?

15 A. To my knowledge, Dale, Jr., Junior
16 and his company name is Junior or JR
17 Motorsports.

18 Q. So in your experience, do
19 consumers refer to Dale Earnhardt, Jr. as
20 just Earnhardt?

21 A. No. At our store, they refer to
22 him as Dale Earnhardt, Jr.

23 Q. In your experience when consumers
24 refer to Earnhardt, are they referring to
25 Kerry Earnhardt?

1 A. No.

2 Q. I want to now talk a little bit
3 about the licensing procedures at DEI. We
4 talked about that a little bit earlier,
5 but I would like to get into a little bit
6 more detail.

7 Can you describe generally the
8 process at DEI if a merchandising company
9 wants to market products using trademarks
10 licensed by DEI, so a merchandising
11 company, what would they first do?

12 A. Typically we receive a call from a
13 potential licensee and they are
14 questioning what their next step is.

15 At DEI we refer them to Mr.
16 Taulbee. Mr. Taulbee returns their phone
17 call. He listens to what they have to
18 offer and he determines if this is
19 something that DEI would be interested in.

20 Q. Assuming he determined it's
21 something that DEI would be interested in,
22 what, if anything, would Mr. Taulbee then
23 do next?

24 A. He would put a proposal together
25 to include the information he has

1 extracted from the potential licensee and
2 discuss that with Mrs. Earnhardt.

3 Q. And assuming then that Mrs.
4 Earnhardt is interested following that
5 discussion with Mr. Taulbee, then what
6 would happen next?

7 A. If she is interested, then a
8 license agreement would be drafted and she
9 would have a final approval on that
10 licensing agreement.

11 Q. So once -- walking through the
12 steps as I think you have explained them,
13 once there is the negotiation between Mr.
14 Taulbee and the licensee, an agreement is
15 reached that Mrs. Earnhardt approves, then
16 does that licensee have free reign to just
17 produce any product falling in the
18 categories of that license?

19 A. No. They have to produce a
20 product that they bring to the table and
21 Mrs. Earnhardt has to approve that before
22 it actually goes into production.

23 Q. Does Mr. Taulbee have the
24 authority to approve samples?

25 A. Only sometimes. He has worked

1 with her for several years and he knows --
2 he basically knows her likes and dislikes,
3 and sometimes he moves forward with those.

4 But if there is an image of Dale,
5 then he would always bring that back for
6 Mrs. Earnhardt's final approval.

7 Q. So is it fair to say that you have
8 observed at least some of the products
9 that have been approved?

10 A. Yes, yes.

11 Q. Can you tell me one way or another
12 whether the products approved include
13 products that include the word Earnhardt
14 by itself?

15 A. Yes, there are just the name
16 Earnhardt on products, yes.

17 Q. Can you give some examples of
18 products that include just the name
19 Earnhardt?

20 A. Yes. We have apparel. We have
21 license plates. We have Koozies. We have
22 glasses. We have mugs. Right off the top
23 of my head, those are the ones I can
24 remember.

25 Q. Has that been only recently or

1 since you have been there?

2 A. No, it's been since my employment.

3 Q. And to whom did you understand in
4 looking at those products who the word
5 Earnhardt was referring to?

6 A. They always referred to Dale
7 Earnhardt.

8 Q. And that's been the case since as
9 long as you have been with DEI?

10 A. Yes, and before.

11 Q. Have you ever heard the term
12 collection or collectible used in
13 connection with Dale Earnhardt trademarks?

14 A. Yes.

15 Q. What, if anything, is your
16 understanding what those terms mean when
17 used in connection with the Dale Earnhardt
18 trademarks?

19 A. It is a group of licensed
20 memorabilia of Dale's.

21 Q. So if the term Earnhardt
22 collection were used in connection with
23 custom home services, how in your
24 experience would a customer perceive that?

25 MR. DAVIS: Objection, personal

1 knowledge.

2 MR. ROSE: You can go ahead and
3 answer. You want me to rephrase it?

4 THE WITNESS: If you would.

5 BY MR. ROSE:

6 Q. If you were to see the term
7 Earnhardt collection used in connection
8 with custom homes or custom home services,
9 Earnhardt collection, in your experience
10 having been in the business for 16 years,
11 what would you understand consumers would
12 interpret that to mean?

13 MR. DAVIS: Objection,
14 speculation.

15 MR. ROSE: You can go ahead and
16 answer.

17 THE WITNESS: I would speculate
18 that they would think that it was a
19 collection related to Dale Earnhardt.

20 BY MR. ROSE:

21 Q. And that's based on your 16 years
22 experience?

23 A. Yes.

24 Q. And if the term Earnhardt
25 collection were used in connection with

1 home furniture or home decor items such as
2 you have described, what would your
3 understanding of that be?

4 A. Again, I would speculate that that
5 is a collection relating to Dale
6 Earnhardt.

7 Q. But without speculation, what
8 would your own personal understanding of
9 that be?

10 A. I would think that it was Dale
11 Earnhardt.

12 Q. Would you expect or believe that
13 to relate to anybody else, for example,
14 anyone else named Earnhardt besides Dale
15 Earnhardt?

16 A. No. And I would think that anyone
17 that would read that name would think that
18 it would be Dale Earnhardt collection.

19 MR. DAVIS: Objection,
20 speculation, move to strike.

21 MR. ROSE: We would oppose that
22 motion. I think it was responsive.

23 But with that, I have no further
24 questions.

25 MR. DAVIS: Finished?

1 MR. ROSE: Yes.

2 MR. DAVIS: Could we take ten
3 minutes or so, and we will resume in ten
4 minutes.

5 (Off-the-record, brief recess.)

6 CROSS-EXAMINATION

7 BY MR. DAVIS:

8 Q. Good afternoon, Ms. Queen. How
9 are you this afternoon?

10 A. Fine, thank you.

11 Q. My name is Cary Davis, and I
12 represent the trademark applicant in this
13 case, Kerry Earnhardt, Inc.

14 You and I met a little bit before,
15 but I'm just going to be asking you some
16 questions following up on those that you
17 answered on direct examination. Do you
18 understand?

19 A. Yes, sir.

20 Q. And I'm going to be referring from
21 time to time to a deposition that you gave
22 in this case on June the 2nd of this year.
23 Do you recall that deposition?

24 A. Yes, sir.

25 Q. And you recall that your attorney

1 was there with you?

2 A. Yes.

3 Q. And that there was a court
4 reporter there?

5 A. Yes.

6 Q. You were under oath?

7 A. Yes.

8 Q. Okay. So we understand what we
9 are talking about, alright.

10 I want to drill down a little bit
11 on your testimony about your involvement
12 in the licensing program at DEI, okay?

13 A. Yes, sir.

14 Q. Now, you don't have any role,
15 actual role in licensing Dale Earnhardt
16 merchandise, right?

17 A. No, other than I oversee the
18 licensing under the umbrella of DEI.

19 Q. So that falls within your area of
20 responsibility as the vice president of
21 operations?

22 A. Yes.

23 Q. That department does?

24 A. There is no such department.

25 Q. Okay.

1 A. Mr. Taulbee handles the licensing
2 for Dale Earnhardt, Inc.

3 Q. Okay. And before Mr. Taulbee
4 assumed that role, the person who would
5 have been handling the licensing for DEI
6 would have been Amy Hallman, is that
7 right?

8 A. Yes.

9 Q. And that would have -- that change
10 would have happened from Ms. Hallman to
11 Mr. Taulbee somewhere around the end of
12 last year, beginning of this year?

13 A. I believe you're correct, yes.

14 Q. And Ms. Hallman's position at DEI
15 was the licensing coordinator, is that
16 right?

17 A. That's correct.

18 Q. And so prior to Mr. Taulbee,
19 assuming taking the lead on the licensing
20 program, Amy Hallman before that would
21 have been the person most knowledgeable at
22 DEI about the licensing program, right?

23 MR. ROSE: Object to form.

24 MR. DAVIS: You can answer.

25 THE WITNESS: Amy was the go to

1 person for licensing.

2 BY MR. DAVIS:

3 Q. So while she was there and in the
4 role as licensing coordinator, she was the
5 go to person for licensing?

6 A. Yes.

7 Q. You testified on direct about
8 instances where just the name Earnhardt
9 appeared on merchandise without Dale
10 before it. Do you recall that?

11 A. Yes.

12 Q. When Earnhardt appears without
13 Dale, isn't it always accompanied by some
14 other indicia of Dale Earnhardt, Sr.?

15 MR. ROSE: Object to the form.

16 MR. DAVIS: Do you understand my
17 question or can I do better?

18 THE WITNESS: Yes.

19 BY MR. DAVIS:

20 Q. I will try. When Earnhardt
21 appears by itself without Dale before it,
22 doesn't it always appear alongside the car
23 number three or his signature or a picture
24 of him?

25 A. No.

1 Q. Let's say there are -- why don't
2 you describe for me instances where only
3 Earnhardt appears with nothing else around
4 it or beside it.

5 A. The first example come to mind is
6 a pair of I'm going to call them lounge
7 pants, pajama pants or something like
8 that, the name Earnhardt is down the side
9 of them.

10 We have T-Shirts with the name
11 across the back or the front that just
12 state Earnhardt. There are ball caps with
13 just the name Earnhardt on them.

14 Q. In the universe of Dale Earnhardt
15 memorabilia, that's a very small
16 percentage, right?

17 MR. ROSE: Object to the form.

18 THE WITNESS: I can't answer that
19 honestly. I honestly don't know the
20 answer to that.

21 BY MR. DAVIS:

22 Q. Okay. When Mr. Taulbee is looking
23 at the samples that are submitted by the
24 licensee -- do you remember testifying
25 about that on direct?

1 A. Yes.

2 Q. And then he takes a recommendation
3 to Teresa Earnhardt after he reviews the
4 sample, right?

5 A. Yes.

6 Q. And if the Dale Earnhardt
7 trademark does not appear on the
8 memorabilia that is consistent with the
9 registered trademark, he recommends that
10 that not be approved, is that correct?

11 MR. ROSE: Object to form.

12 THE WITNESS: I prefer not to
13 answer that.

14 BY MR. DAVIS:

15 Q. Well, you are going to have to
16 answer. If I can make a better question,
17 I will try to do that.

18 A. Okay.

19 Q. Whenever Mr. Taulbee reviews a
20 sample submitted by a licensee -- do you
21 follow me?

22 A. Yes, sir.

23 Q. If the trademark or the logo that
24 appears on that sample does not match the
25 registered trademark -- you follow me?

1 A. Yes, sir.

2 Q. In every case Mr. Taulbee would
3 recommend to Teresa Earnhardt that that
4 not be approved, right?

5 MR. ROSE: Objection to the form,
6 mischaracterizes.

7 MR. DAVIS: You can answer.

8 MR. ROSE: If you are able to.

9 THE WITNESS: He does not -- to my
10 knowledge, he does not -- if it does not
11 appear correctly, he does not submit it to
12 her.

13 BY MR. DAVIS:

14 Q. And by appearing correctly, you
15 mean match the registered trademark,
16 right?

17 A. Yes, sir.

18 Q. And as far as you know, the only
19 trademark registration that Ms. Earnhardt
20 owns related to her late husband is Dale
21 Earnhardt, right?

22 MR. ROSE: Object to form, lacks
23 foundation.

24 THE WITNESS: Could you ask again,
25 please?

1 BY MR. DAVIS:

2 Q. I will. As far as you know, the
3 only trademark registration or trademark
4 that Ms. Earnhardt owns related to her
5 late husband is Dale Earnhardt?

6 MR. ROSE: Same objection and
7 outside the scope of direct. You may
8 answer if you are able to. I just wanted
9 to lodge an objection, but I wasn't sure
10 if you were done with the question.

11 MR. DAVIS: I am done. Thank you.

12 MR. ROSE: So objection as to form
13 and outside the scope of direct.

14 MR. DAVIS: You can answer.

15 THE WITNESS: To my knowledge,
16 yes.

17 BY MR. DAVIS:

18 Q. Dale Earnhardt is the only
19 trademark?

20 MR. ROSE: Object to the form.
21 Same objections, outside scope as well.

22 MR. DAVIS: You can answer.

23 THE WITNESS: I'm not sure, but I
24 think so.

25 BY MR. DAVIS:

1 Q. Okay. She does not have a --
2 there is not a registration for the name
3 Earnhardt by itself, right?

4 A. I'm not aware of that. By that, I
5 don't know.

6 Q. Okay, that's fair enough. And
7 neither Teresa Earnhardt nor DEI is
8 engaged in the business of home building,
9 is that right?

10 A. I'm not sure how to answer that.
11 She has a new business moving forward and
12 the plans have been submitted and there
13 will be new homes built on her properties.
14 So I'm not quite sure how to answer that.

15 MR. ROSE: If you know, you know.
16 If you don't, you don't.

17 THE WITNESS: Okay.

18 BY MR. DAVIS:

19 Q. And the name or the trademark Dale
20 Earnhardt has not been used in connection
21 with that project, right?

22 A. I don't know that.

23 Q. You don't know that much about
24 that project, do you?

25 A. No.

1 MR. ROSE: Objection, outside the
2 scope.

3 BY MR. DAVIS:

4 Q. And neither Teresa Earnhardt nor
5 DEI is engaged in the furniture business,
6 is that right?

7 A. Not to my knowledge.

8 Q. And the Dale Earnhardt mark is not
9 licensed or used in connection with
10 furniture, is it?

11 MR. ROSE: Objection to form.

12 MR. DAVIS: You can answer.

13 THE WITNESS: It has been in the
14 past.

15 BY MR. DAVIS:

16 Q. Now, you say in the past. It's
17 not currently -- the Dale Earnhardt mark
18 is not currently being used in connection
19 with furniture, right?

20 A. We have such an extensive list of
21 product. I am not sure if that is still a
22 current licensed product.

23 Q. You just don't know?

24 A. I just don't know that.

25 Q. It may have been in the past?

1 A. Yes.

2 Q. And you testified on direct when
3 Mr. Rose was asking you about things like
4 home decor. You remember that?

5 A. Yes.

6 Q. You did mention furniture. Do you
7 recall that?

8 A. Yes.

9 Q. And you mentioned folding chairs?

10 A. Uh-huh.

11 Q. And blankets, right?

12 A. Uh-huh.

13 Q. Now, we are talking about in that
14 sense furniture, folding chairs. I think
15 you might have said ceiling fans.

16 We are really talking about
17 memorabilia there, aren't we?

18 MR. ROSE: Objection,
19 mischaracterizes.

20 MR. DAVIS: You can answer.

21 THE WITNESS: Could you ask it
22 another way?

23 BY MR. DAVIS:

24 Q. Well, the kinds of furniture or
25 folding chairs or blankets, those kinds of

1 items, those are really memorabilia,
2 aren't they?

3 MR. ROSE: Same objection.

4 THE WITNESS: We classify it as
5 home decor.

6 BY MR. DAVIS:

7 Q. Isn't it true that the only thing
8 that might arguably fall into the category
9 of furniture that has ever appeared with
10 the Dale Earnhardt trademark are blowup
11 children's sofas, things like that?

12 MR. ROSE: Object to the form,
13 mischaracterizes.

14 THE WITNESS: To my knowledge, we
15 had some faux leather furniture, chairs in
16 particular that were manufactured.

17 BY MR. DAVIS:

18 Q. I'm going to refer you to your
19 deposition that you gave on January 2nd of
20 this year, and Bruce, I'm at page --

21 MR. ROSE: I don't have a copy of
22 her transcript with me.

23 THE WITNESS: I don't think it was
24 in January.

25 MR. DAVIS: June, I'm sorry, thank

1 you, page 72, line ten. Ms. Queen, I'm
2 just going to read to you the questions
3 and answers, and then I will have a
4 follow-up question.

5 Starting at page 72, line ten,
6 question, does DEI license any of the Dale
7 Earnhardt marks for furniture? Answer, we
8 have in the past. Question, when was
9 that? Answer, several years ago. I'm not
10 sure.

11 Question, how long? Approximately
12 how long ago? Answer, again, I'm not
13 certain, and again, it would be -- it
14 would -- your definition of furniture,
15 what's it made out of? Are we talking
16 about blowup furniture? Are we talking
17 about wooden furniture? We have furniture
18 with Dale Earnhardt's name on it.

19 Question, when you say you have
20 furniture with Dale Earnhardt's name on
21 it, what type of furniture are you
22 referring to? We are talking about
23 children's beds, chairs.

24 What kinds of chairs? Blowup
25 chairs, blowup sofa. Question, by blowup

1 sofa, you mean an inflatable sofa?

2 Answer, yes.

3 Are those currently -- are those
4 products currently being produced?

5 Answer, I don't know. Is that the --

6 MR. ROSE: Why don't we do this.

7 I want her to be able to read it in

8 context. I have my copy just across the

9 hall. If we can take a two minute break,

10 I will just go get it.

11 MR. DAVIS: That's fine.

12 (Off-the-record, brief recess.)

13 BY MR. DAVIS:

14 Q. Ms. Queen, we have just taken a
15 quick break for your counsel to go and
16 retrieve a copy of the deposition, but
17 have you had the opportunity to read the
18 line of questioning that I just read on
19 the record?

20 A. Yes, sir.

21 Q. And is that testimony correct?

22 A. Yes.

23 Q. Still true today? What you
24 testified to back in June is still true
25 today?

1 A. Yes.

2 Q. DEI has never used Earnhardt
3 collectibles -- you recall your testimony
4 about the Earnhardt collectibles term on
5 your direct examination? You can put
6 that -- I'm sorry. Probably helpful if
7 you put that down. I might refer to it
8 later.

9 A. Okay.

10 Q. You recall your testimony on
11 direct examination about the use of the
12 term Earnhardt collectibles?

13 A. I don't remember.

14 Q. Well, you testified on direct in
15 response to Mr. Rose's questions, do you
16 recall that?

17 A. Yes, but --

18 MR. ROSE: Objection. I don't
19 think I asked her about that term,
20 Earnhardt collectibles.

21 MR. DAVIS: I believe you did, but
22 I am just going to ask a couple quick
23 questions. DEI has never used Earnhardt
24 collectibles as a trademark, right?

25 THE WITNESS: I don't know the

1 answer to that. I know Earnhardt
2 collection and Earnhardt collectibles has
3 been used numerous times referring to
4 Dale's memorabilia, even in newspaper
5 articles.

6 I mean it's just an abundance of
7 newspaper articles relating to that.

8 BY MR. DAVIS:

9 Q. But not Earnhardt collection? You
10 mean Earnhardt collectibles, right?

11 A. It's been used both ways, I think.

12 Q. I thought I understood your
13 testimony earlier just to be Earnhardt
14 collectibles?

15 A. I'm not -- I don't remember what I
16 said in my deposition. If you can tell me
17 what that was, I can -- I just don't
18 remember that question.

19 Q. I'm actually talking about your
20 testimony on direct examination.

21 A. Okay, awhile ago?

22 Q. Yes.

23 A. Okay, ask me the question again,
24 please.

25 Q. Well, I guess I'm just -- simple

1 question.

2 DEI has never used Earnhardt
3 collectibles, not collection, but
4 collectibles as a trademark, right?

5 And what I mean by that is that's
6 just a way to refer collectively to Dale
7 Earnhardt memorabilia, right?

8 MR. ROSE: Objection to form.

9 THE WITNESS: We have sold several
10 pieces of Dale's memorabilia and referred
11 to it as a collection or collectibles, but
12 is that trademarked, no.

13 BY MR. DAVIS:

14 Q. Okay, Earnhardt collectibles is
15 not trademarked, right?

16 A. Not to my knowledge.

17 Q. And, in fact, DEI doesn't use that
18 term in a trademark sense, right?

19 MR. ROSE: Objection to form,
20 lacks foundation.

21 THE WITNESS: I don't know that.

22 BY MR. DAVIS:

23 Q. Alright. I'm going to refer you
24 to your deposition, page 74, line three,
25 beginning there. Question, do you know if

1 DEI --

2 MR. ROSE: Why don't you follow
3 along.

4 BY MR. DAVIS:

5 Q. Are you there?

6 A. Yes.

7 Q. Okay. 74, line three, question,
8 do you know if DEI has ever used the term
9 Earnhardt collectibles as a trademark?
10 Answer, not as a trademark. Is that
11 correct?

12 MR. ROSE: Objection to form,
13 lacks foundation.

14 BY MR. DAVIS:

15 Q. Is that testimony correct?

16 A. Would you help me find that on
17 this page, please.

18 Q. I'm sorry, right there. You see
19 that, 74, line three? Question, do you
20 know if DEI has ever used the term
21 Earnhardt collectibles as a trademark?
22 Answer, not as a trademark.

23 Is that testimony still correct?

24 MR. ROSE: Objection to form and
25 foundation.

1 THE WITNESS: To my knowledge,
2 yes, but I don't know that for certain.

3 BY MR. DAVIS:

4 Q. And DEI's retail store, it doesn't
5 sell anything other than memorabilia,
6 right?

7 A. Correct.

8 Q. And how many days a week is that
9 store open?

10 A. It varies, but it's, let's see, at
11 least four days a week.

12 Q. How many hours on those days?

13 A. Probably four to six hours. That
14 varies as well. It could be more than
15 six. Some days it's open eight hours.

16 Q. DEI has never licensed any Dale
17 Earnhardt marks to a home builder before,
18 is that correct?

19 MR. ROSE: Objection to form,
20 lacks foundation, outside the scope.

21 THE WITNESS: I don't know the
22 answer to that.

23 BY MR. DAVIS:

24 Q. You review -- in your role as vice
25 president of operations, you occasionally

1 review royalty reports, right?

2 A. Yes.

3 Q. There aren't any home builders on
4 those royalty reports, are there?

5 MR. ROSE: Objection to form,
6 lacks foundation and outside the scope.

7 THE WITNESS: Not that I recall.

8 BY MR. DAVIS:

9 Q. On your direct examination Mr.
10 Rose was asking you some questions about
11 if you heard -- you personally heard
12 somebody say Earnhardt collection, what
13 would that bring to mind? Do you recall
14 those questions?

15 A. Yes.

16 Q. You are not aware of any evidence
17 of any member of the public being confused
18 about whether Earnhardt collection, that's
19 the mark that Kerry Earnhardt is seeking
20 to register in these proceedings, has
21 anything to do with Dale Earnhardt?
22 That's right, isn't it?

23 A. Would you repeat that, please?

24 Q. You are not aware of any evidence
25 of any member of the public confusing

1 Earnhardt collection with Dale Earnhardt,
2 Sr., right?

3 MR. ROSE: Objection to form.

4 THE WITNESS: I don't know. I
5 have not heard any. I don't know.

6 BY MR. DAVIS:

7 Q. You are not aware of any evidence
8 of that, right?

9 A. No.

10 Q. You mentioned on your direct
11 examination that people will sometimes
12 call DEI and they will say or ask for or
13 just refer to Earnhardt?

14 A. Yes.

15 Q. Do you remember that? Now, they
16 are calling DEI, right?

17 A. Yes.

18 Q. And that was Dale, Sr.'s company
19 that he founded, right?

20 MR. ROSE: Objection to form.

21 THE WITNESS: Yes.

22 BY MR. DAVIS:

23 Q. And wouldn't you expect them if
24 they say Earnhardt and they are calling
25 DEI, that they would be referring to Dale,

1 Sr. who started that company?

2 MR. ROSE: Objection to form.

3 THE WITNESS: I can't answer that
4 question to all the calls. I can answer
5 only to the calls that I took, and those
6 calls were directed to Dale.

7 BY MR. DAVIS:

8 Q. Okay. You want to add something?

9 A. Yeah, I do. I think I earlier
10 stated friends and associates. The France
11 family, Mike Helton, Dale's closest
12 friends and even Dale himself referred to
13 himself as Earnhardt, and I think I may
14 have said that earlier.

15 Q. Okay. And you're employed by DEI?

16 A. Yes.

17 Q. The vice president of operations?

18 A. Yes.

19 Q. And Teresa Earnhardt is the
20 president of DEI, right?

21 A. Yes.

22 Q. And you are the only person within
23 DEI who reports directly to Ms. Earnhardt,
24 right?

25 A. Yes.

1 Q. Everybody else within DEI reports
2 to you, right?

3 A. Yes.

4 Q. And then you report to Ms.
5 Earnhardt?

6 A. Yes, but that doesn't mean that
7 she doesn't take calls from other people.

8 Q. Okay, that wasn't my question. I
9 was just trying to establish kind of the
10 chain of command?

11 A. Okay.

12 Q. And Ms. Earnhardt works from home
13 90 percent of the time, is that right?

14 MR. ROSE: Object to form.

15 THE WITNESS: I can't put that
16 percentage to it.

17 BY MR. DAVIS:

18 Q. Okay. Well, you recall your
19 deposition being taken in this matter,
20 page 92, line 15. Are you there?

21 A. Yes.

22 Q. Question, okay, is Ms. Earnhardt
23 still involved in DEI's business on a
24 day-to-day basis? Answer, yes. Question,
25 she is involved? Answer, yes. On a

1 day-to-day basis? Answer, yes. Question,
2 does she come into the office? Answer,
3 she works from home and works from the
4 office.

5 Question, how often does she work
6 from home? Answer, 90 percent of the
7 time. Do you see that?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 MR. DAVIS: I'm going to ask some
12 questions that at the risk of -- I just
13 want to be careful here -- that may get
14 into a few confidential matters or matters
15 that have been designated attorneys' eyes
16 only.

17 So, Joe, if you wouldn't mind
18 just -- I won't be but you a few minutes.

19 (Mr. Hedrick leaves the room.)

20 BY MR. DAVIS:

21 Q. Alright, Ms. Queen, you recall on
22 your testimony on direct examination that
23 you were discussing the fame of Dale
24 Earnhardt, Sr.?

25 A. Yes.

1 MR. ROSE: Object to form. For
2 your information, he is referred to
3 generally within DEI as Dale Earnhardt.
4 There is no Dale Earnhardt, Sr. There is
5 Dale Earnhardt and Dale Earnhardt, Jr.

6 You can explore that with her if
7 you like.

8 MR. DAVIS: That's alright, I
9 appreciate that, though.

10 MR. ROSE: I tried to just say
11 object to the form, but you had a
12 questioning look on your face. I just
13 wanted to clarify.

14 MR. DAVIS: I did, and I
15 appreciate that. Thank you.

16 And about how his items are sold
17 at NASCAR tracks and various places around
18 the country, do you recall that testimony?

19 THE WITNESS: Yes.

20 BY MR. DAVIS:

21 Q. And that was directed to the
22 strength of the Dale Earnhardt mark, that
23 testimony, wasn't it?

24 A. Yes.

25 Q. But, in fact, the Dale Earnhardt

1 trademark is not nearly as strong as it
2 once was, would you agree with that?

3 A. Yes.

4 Q. Because fewer and fewer people are
5 buying Dale Earnhardt merchandise these
6 days, right?

7 A. I would say yes, but I would put a
8 but to that.

9 Q. Okay.

10 A. I don't think that DEI has
11 marketed as much as we have in the past,
12 so therefore, there is not as much new
13 merchandise out there as there has been in
14 the past, but that is improving as we
15 change our business strategy.

16 Q. But DEI does not have a marketing
17 department, right?

18 A. No.

19 Q. And the fact that there is less
20 stuff out there being sold with the Dale
21 Earnhardt trademark on it, means there are
22 less license agreements out there today
23 than there were several years ago, right?

24 MR. ROSE: Objection to form.

25 THE WITNESS: Probably.

1 BY MR. DAVIS:

2 Q. The drop in revenue in royalties
3 and licenses has been fairly dramatic in
4 recent years, hasn't it?

5 MR. ROSE: Object to form.

6 THE WITNESS: It has dropped, yes.

7 BY MR. DAVIS:

8 Q. At one time the amount generated
9 in royalties and licenses by DEI, that
10 amount was in the neighborhood of several
11 millions of dollars a year, right?

12 A. Yes.

13 Q. And now the revenue which used to
14 be several million dollars is several
15 thousand dollars, right -- several hundred
16 thousand dollars, I'm sorry?

17 A. Yes.

18 Q. About ten percent of what the
19 sales used to be, right?

20 A. Yes.

21 Q. And Dale Earnhardt, Inc. got rid
22 of the marketing department in 2010, is
23 that right?

24 A. I'm not sure about the year, but
25 that sounds about right, yes.

1 Q. And that was part of company
2 downsizing, right?

3 A. Yes.

4 MR. DAVIS: Let's go off the
5 record for one second.

6 (Off-the-record, brief recess.)

7 MR. DAVIS: Give me just one
8 minute. I'm going to flip through my
9 notes, but I think I'm about finished.

10 That's all the questions I have at
11 this time.

12 MR. ROSE: No further questions.

13 (Signature reserved.)

14 (Whereupon, at 2:10 p.m., the
15 taking of the instant deposition ceased.)
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1 E R R A T A S H E E T

2 RE: TERESA H. EARNHARDT V. KERRY
3 EARNHARDT, INC.

4 DEPOSITION OF: JUDY QUEEN

5 Please read this original deposition
6 with care, and if you find any corrections
7 or changes you wish made, list them by
8 page number, line number and state reason
9 for change below. DO NOT WRITE IN THE
10 DEPOSITION ITSELF. Return the deposition
11 to this office after it is signed. We
12 would appreciate your prompt attention to
13 this matter.

14 To assist you in making any such
15 corrections, please use the form below.
16 If supplemental or additional pages are
17 necessary, please furnish same and attach
18 them to this errata sheet.

19 Page ____ Line ____ should
20 Read: _____

21 Reason for change _____

22 Page ____ Line ____ should
23 Read: _____

24 Reason for change _____

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1 Page ____ Line ____ should
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16 Page ____ Line ____ should
17 Read: _____
18 Reason for change _____
19 _____
20 Signature of Witness
21 SUBSCRIBED and SWORN TO before me this
22 ____ day of _____, 20____.
23 _____
24 NOTARY PUBLIC
25 My Commission expires: _____

1 CERTIFICATE OF REPORTER

2 STATE OF NORTH CAROLINA}

3 COUNTY OF MECKLENBURG }

4 I, Andrea L. Nobrega, the officer
5 before whom the foregoing deposition was
6 taken, do hereby certify that the witness
7 whose testimony appears in the foregoing
8 deposition was duly sworn by me; that the
9 testimony of said witness was taken by me
10 to the best of my ability and thereafter
11 reduced to typewriting under my direction;
12 that I am neither counsel for, related to,
13 nor employed by any of the parties to the
14 action in which this deposition was taken,
15 and further that I am not a relative or
16 employee of any attorney or counsel
17 employed by the parties thereto, nor
18 financially or otherwise interested in the
19 outcome of the action.

Andrea L. Nobrega

20

21

ANDREA L. NOBREGA

22

Court Reporter and Notary

23

Public in and for North

24

Carolina.

25

My Commission expires: 11-25-16

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Teresa H. Earnhardt,	§	Consolidated Opposition Nos.
	§	91205331 (parent) and 91205338
Opposer,	§	
	§	In the matter of:
vs.	§	
	§	Application Serial No. 85/383,910
Kerry Earnhardt, Inc.,	§	Mark: EARNHARDT COLLECTION
	§	(Intl. Class 20)
Applicant.	§	
	§	Application Serial No. 85/391,456
	§	Mark: EARNHARDT COLLECTION
		(Intl. Class 37)

**OPPOSER'S NOTICE OF DEPOSITION
OF JUDY QUEEN**

PLEASE TAKE NOTICE that Opposer will take the deposition upon oral examination of Judy Queen. The deposition will take place at the offices of Alston & Bird LLP, 101 S. Tryon Street, Suite 4000, Charlotte, North Carolina 28280-4000, at 1:00 p.m., Tuesday, August 26, 2014, or at such other date, time and/or place as may be agreed by the parties. This deposition shall be taken by stenographic means and shall continue on the specified date until completed.

Respectfully submitted,

s/Carla H. Clements
Larry C. Jones
Carla H. Clements
Alston & Bird, LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
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Telephone: (704) 444-1000

Attorneys for Opposer,
Teresa H. Earnhardt

EXHIBIT

Opposer's Exh. No. 16
Opposition No. 91205331

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Opposer’s Notice of Deposition of Judy Queen” was duly served on Applicant by depositing a copy of same in the United States mail, first-class postage prepaid, on the 25th day of August, 2014 addressed to Applicant’s attorneys of record as follows:

D. Blaine Sanders
Cary B. Davis
Matthew F. Tilley
Robinson Bradshaw & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246-0106

s/Carla H. Clements
Carla H. Clements